

In the Claims:

Please amend Claims 1, 21, and 28. Claims 1-29 remain in the application.

In accordance with 37 C.F.R. § 1.121 to be amended and the February 25, 2003 Official Gazette, a complete listing of all claims in the application is attached.

REMARKS

Independent Claim 1 has been amended to clarify that the method “for protecting a material from termite infestation” refers to a material that “without said treatment would be susceptible to termite infestation.” Support for this clarification is found in Claim 1 as originally filed as understood by a person of ordinary skill in the art. This amendment is meant for clarification only, and is not intended to change the scope of the claims.

Independent Claim 21 has been amended to clarify that the composition “for a protective barrier against termites” comprises in part a “wood building material” that “is susceptible to termite infestation” without the addition of the compound. Support for this clarification is found in Claim 21 as originally filed as would be understood by a person of ordinary skill in the art. Claim 21 has also been amended to be consistent in referring to “wood building material.” These amendments are meant for clarification only, and are not intended to change the scope of the claims.

Independent Claim 28 has been amended to clarify that the composition “for a protective barrier against termites” comprises in part a “substrate material” that “is susceptible to termite infestation” without the addition of the compound. Support for this clarification is found in Claim 28 as originally filed as would be understood by a person of ordinary skill in the art. This amendment is meant for clarification only and is not intended to change the scope of the claims.

Claims 1- 29 remain in the application. Claims 9-20 have been allowed. It is respectfully submitted that the Claims as amended are in condition for allowance. The following remarks are offered in support of allowance of Claims 1- 8 and 21-29. Reexamination and reconsideration of the application in light of the above amendments and the following remarks are respectfully requested.

Although the Office made no reference to Claim 29, this claim was added at the same time as Claim 28 in the March 14, 2002 Amendment Under 37 C.F.R. §1.111. Claim 29 is a dependent claim to Claim 28.

The § 102 Rejections

Baxter et al. Claims 1-5, 21, 22, and 27 were rejected under 35 U.S.C. §102 (b) as being anticipated by Baxter *et al.*. The Office cited Baxter as teaching adding nootkatone to water (aqueous citric acid). The Office stated that water “is considered a wood building material as well as a substrate.” The Baxter reference does not teach or suggest adding nootkatone as a method to protect any material from termites. The Baxter reference does not teach or anticipate adding nootkatone to any material that is susceptible to termite infestation. Applicants disagree that a “wood building material” would include water. Water has neither wood products nor derivatives of wood in it. Water is not a material that termites would otherwise infest and thus would not be included in the amended Claims 1 and 21. It is respectfully submitted that the Baxter reference neither teaches nor suggests either the method of Claim 1 or the composition of Claim 21, the two independent claims. If these two claims are not anticipated, then the dependent claims 2 - 5, 22, and 27 are not anticipated.

JP 61033129. Claims 1-4, 7, 8, and 28 were rejected under 35 U.S.C. §102(b) as being anticipated by JP 61033129. The Office stated that this reference teaches a method of using bicyclovetivenol as a local anesthetic, and considered the body as a “substrate.” Applicants respectfully submit that independent Claim 1 describes a method for “protecting a material from termite infestation,” and requires such material to be otherwise susceptible to termite infestation. A human body is not such a material that is otherwise “susceptible to termite infestation.” Claim 28 describes a composition for a “protective barrier against termite infestation” and defines the barrier as comprising in part a “substrate material,” which would otherwise be susceptible to termite infestation. The word “barrier” as used in claim 28 would not include a human body. Applicants respectfully submit that this reference neither anticipates, teaches nor suggests either the method of Claim 1 or the composition of Claim 28, or the claims that depend from them (Claims 2-4, 7, 8 and 29).

Nishimura et al. Claims 1-4, 6, 8, and 28 were rejected under 35 U.S.C. §102(b) as being anticipated by Nishimura et al. The Office stated that Nishimura “teaches a method where zizanol is added to ketones and acids” and that “ketone and acid are considered materials or substrates.” The Nishimura reference, as indicated by the title, is a reference directed to the “Volatile constituents of vetiver oil. Identification of phenol derivatives.” The authors state that they determined in five vetiver oils certain alcohols, ketones and acid compositions. Applicants disagree that ketones or acids would be considered covered by independent claims 1 and 28. Claims 1 and 28, as amended, require the material or barrier to be susceptible to termite infestation without the addition of the stated compounds. Liquids are not considered such materials. Nishimura does not anticipate, teach or suggest either the method of Claim 1 or the composition of Claim 28, or the claims that depend from them (Claims 2-4, 6, 8, and 29).

Kashihara. Claims 1-5, 8, 21, 22, and 27 were rejected under 35 U.S.C. §102(a) as being anticipated by Kashihara. The Office stated that Kashihara teaches a method of adding nootkatone to water or plastic, and that either “water or plastic is considered a material as well as a substrate.” Kashihara describes a method that uses nootkatone to “dissolve plastics.” Applicants respectfully submit that Kashihara does not anticipate independent claims 1 and 21, which describe adding nootkatone for “protecting a material from termite infestation” and for “a protective barrier against termite infestation.” Applicants disagree that water, or any liquid, would be considered a “material” or “barrier” as used in Claims 1 and 21. Moreover, the use of nootkatone to “dissolve” plastic would by necessity not be the same use as protecting the material from termite infestation. Kashihara neither anticipates, teaches nor suggests either the method of Claim 1 or the composition of Claim 21 as amended, or of the claims dependent on them (Claims 2-5, 8, 22 and 27).

It is respectfully submitted that the §102 rejections should be withdrawn.

The § 103 (a) Rejections

Baxter and Kashihara. Claims 22 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Baxter *et al.* and Kashihara. Claims 22-24 depend from Claim 21. Claim 21, as amended and as discussed above, is neither anticipated nor made obvious by either Baxter *et al.* or

Kashihara, and thus the Claims that depend from Claim 21 would neither be obvious nor anticipated.

It is respectfully submitted that the § 103 rejections should be withdrawn.

Claim Objections

Claims 25-26, dependent claims of Claim 21, were objected to as being dependent upon a rejected base claim. For the reasons discussed above, the rejections to Claim 21 should be withdrawn, and the base claim allowed. If the independent claim is neither anticipated nor obvious, then the dependent claims should be allowed.

Applicants respectfully submit that these objections should be withdrawn.

Conclusion

For the reasons discussed, it is respectfully submitted that all pending claims are in condition for allowance. If the Office disagrees with any of these remarks, or if other issues arise that may present an obstacle to allowance, the undersigned would welcome a telephone call to discuss such matters before further action is taken. Otherwise, allowance of Claims 1-8 and 21-29 at an early date is solicited. Claims 9-20 have already been allowed.

Respectfully submitted,



Bonnie L. Davis

Registration No. 41,699

Taylor, Porter, Brooks & Phillips, L.L.P.

P.O. Box 2471

Baton Rouge, Louisiana 70821

(225) 381-0236

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Complete Listing of Claims

1. (currently amended) A method for protecting a material from termite infestation, comprising treating the material with a composition comprising an effective amount of a compound selected from the group consisting of nootkatone, zizanol, and bicyclovetivenol, wherein said composition is free of vetiver oil, wherein said material without said treatment is susceptible to termite infestation, and wherein the treated material repels or kills termites substantially more than does an otherwise identical material that has not been treated with the compound.
2. (original) A method as in claim 1, wherein the treated material repels termites.
3. (original) A method as in claim 1, wherein the treated material kills termites.
- DI 4. (original) A method as in claim 1, wherein the material to be treated is selected from a list comprising soil, substrate, plastics, diatomaceous earth, and any cellulose-containing materials.
5. (original) A method as in claim 1, wherein the compound is nootkatone.
6. (original) A method as in claim 1, wherein the compound is zizanol.
7. (original) A method as in claim 1, wherein the compound is bicyclovetivenol.
8. (original) A method as in claim 1, additionally comprising treating the material with a one or more different compounds selected from the group comprising nootkatone, α -cedrene, zizanol and bicyclovetivenol.

9. (previously amended) A composition for a protective barrier against termite infestation, said barrier composition comprising an effective amount of a compound selected from the group consisting of nootkatone, zizanol and bicyclovetivenol, and a substrate material selected from the group consisting of mulch, soil, and diatomaceous earth, wherein said composition is free of vetiver oil and wherein such treated barrier repels or kills termites substantially more than does an otherwise identical barrier that has not been treated with the compound.
10. (original) A composition as in Claim 9, wherein the substrate material is a mulch.
11. (original) A composition as in Claim 10, wherein the mulch is dried vetiver grass.
12. (original) A composition as in Claim 10, wherein the mulch is another cellulose-containing material.
13. (original) A composition as in Claim 9, wherein the substrate material is soil.
14. (original) A composition as in Claim 9, wherein the substrate material is diatomaceous earth.
15. (original) A composition as in claim 9, wherein the compound is nootkatone.
16. (original) A composition as in Claim 15, wherein the concentration of nootkatone in said barrier is between about 10 $\mu\text{g/g}$ and about 1000 $\mu\text{g/g}$.
17. (original) A composition as in Claim 15, wherein the concentration of nootkatone in said barrier is between about 10 $\mu\text{g/g}$ and about 200 $\mu\text{g/g}$.
18. (original) A composition as in Claim 9, wherein the compound is zizanol.

19. (original) A composition as in Claim 9, wherein the compound is bicyclovetivenol.
20. (original) A composition as in claim 9, additionally comprising treating the material with a one or more different compounds selected from the group comprising nootkatone, α -cedrene, zizanol and bicyclovetivenol.
21. (currently amended) A composition for a protective barrier against termite infestation, said barrier composition comprising an effective amount of a compound selected from the group consisting of nootkatone, zizanol, and bicyclovetivenol, and a wood building material, wherein said wood building material without said compound is susceptible to termite infestation, wherein said composition is free of vetiver oil and wherein the treated wood building material repels or kills termites substantially more than does an otherwise identical wood building material that has not been treated with the compound.
22. (original) A composition as in claim 21, wherein the compound is nootkatone.
23. (original) A composition as in Claim 22, wherein the concentration of nootkatone in said barrier is between about 10 $\mu\text{g/g}$ and about 1000 $\mu\text{g/g}$.
24. (original) A composition as in Claim 22, wherein the concentration of nootkatone in said barrier is between about 10 $\mu\text{g/g}$ and about 200 $\mu\text{g/g}$.
25. (original) A composition as in Claim 21, wherein the compound is zizanol.
26. (original) A composition as in Claim 21, wherein the compound is bicyclovetivenol.
27. (previously amended) A composition as in claim 21, additionally comprising treating the material with a one or more different compounds selected from the group comprising nootkatone, α -cedrene, zizanol and bicyclovetivenol.

28. (currently amended and previously added) A composition for a protective barrier against termite infestation, said barrier composition comprising an effective amount of a compound selected from the group consisting of zizanol and bicyclovetivenol, and a substrate material, wherein said substrate material without said compound is susceptible to termite infestation, wherein said composition is free of vetiver oil, and wherein such treated barrier repels or kills termites substantially more than does an otherwise identical barrier that has not been treated with the compound.

29. (previously added) A composition as in claim 28, additionally comprising treating the material with a one or more different compounds selected from the group comprising nootkatone, α -cedrene, zizanol and bicyclovetivenol.
